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OFFICE OF PETITIONS

In re Application of :
George T. Mott :
Application No. 10/619,082 : ON PETITION
Filed: 14 July, 2003 :
Attorney Docket No. 0034-P02938US1 :

This is a decision on the petition filed on 31 January, 2005, under 37 CFR 1.137(a)¹ to revive the above-identified application which is first treated as a petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment is **dismissed**.

The petition to revive under 37 CFR 1.137(a) is **granted**.

¹A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(1);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 15 July, 2004, for failure to timely submit a reply to the non-final Office action mailed on 14 April, 2004, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 17 December, 2004.

Petitioner asserts that a reply to the Office action was timely filed with a one (1)-month extension of time.

In support, petitioner has supplied a copy of an amendment and request for one (1) month extension of time. The paper contains a "Certificate of Mailing Under 37 CFR 1.8(a)" signed by counsel's secretary, Dawn M. Holzwarth, stating that the paper was deposited on July 26, 2004 as first-class mail in an envelope addressed to COMMISSIONER OF PATENTS, Alexandria, VA 22313-1450. Petitioners have also provided a verified statement from Ms. Holzwarth attesting to the above.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner's showing of evidence has been considered, but is not persuasive.

37 CFR 1.1 states, in pertinent part:

1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) In general. Except as provided in paragraphs (a)(3)(i), (a)(3)(ii) and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either "Director of the United States Patent and Trademark Office, **P.O. Box 1450**, Alexandria, Virginia 22313-1450" or to specific areas within the Office as set out in paragraphs (a)(1) and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

(1) Patent correspondence.

(i) In general. All

correspondence concerning patent matters processed by organizations reporting to the Commissioner for Patents should be addressed to: Commissioner for Patents, **PO Box 1450**, Alexandria, Virginia 22313-1450.

(Emphasis added)

37 CFR 1.8(a) states, in pertinent part:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § **1.1(a)** and deposited with the U.S. Postal Service with sufficient postage as first class mail...

(Emphasis added)

The showing of record is that the certificate of mailing, and the reply to the Office action, were not properly addressed to the USPTO in that petitioner omitted the "P.O. Box 1450" portion of the address. While it appears that such error was clerical in nature, petitioner did not, in fact, address his correspondence as set forth in 37 CFR 1.1(a). As such, petitioner did not comply with the certificate of mailing requirements of 37 CFR

1.8(a). Therefore, the showing of record is that the correspondence may not have been received in the Office as a result of being misaddressed.

In view of the above, the petition under 37 CFR 1.181 is dismissed, and the holding of abandonment will not be withdrawn.

PETITION UNDER 37 CFR 1.137(a).

The petition is granted.

The application has been restored to pending status.

The application is being forwarded to Technology Center Art Unit 3651 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions